Filed 9/30/14 Estate of Slocum CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

Estate of CAROL J. SLOCUM, Deceased.	
SHERRI MOHR, as Special Administrator, etc.,	G050080
Petitioner and Respondent,	(Super. Ct. No. PROPS1100603)
v.	O P I N I O N
TERRY MOHR,	
Objector and Appellant.	

Appeal from a judgment of the Superior Court of San Bernardino County, J. Michael Welch, Judge. Affirmed.

John E. Douglass for Objector and Appellant.

Caldwell, Kennedy & Porter and Rose C. Rosado for Petitioner and Respondent.

* * *

In this appeal, appellant Terry Mohr (Terry)[1] wages an evidentiary challenge to a judgment of the probate court ordering the repayment of monies he obtained from his mother and the cancellation of a deed transferring his mother's residence to him. We apply the substantial evidence rule to affirm the judgment. We also reject Terry's challenges to the court's evidentiary rulings.

I

FACTS

Carol Slocum (decedent), the 76-year-old mother of seven children, had emergency surgery on June 26, 2011. She was in a coma for five days thereafter. In late July 2011, she was placed in a rehabilitation facility. After her condition worsened, she was admitted to a hospital emergency facility on August 2, 2011.

After her treating physicians told her she was terminal, decedent decided she needed to see her children as soon as possible. Terry, who lived with decedent, was able to arrange for most of his siblings to be at the hospital on August 3, 2011. He also arranged for a notary public (notary) with a deed to come to the hospital that day. Decedent executed the deed on that date. It served to transfer her residence from her name alone into the names of herself and Terry as joint tenants. Decedent died intestate on August 12, 2011.

Later that month, Terry's sister Sherri Mohr (Sherri) filed a petition for letters of administration. Letters of special administration were issued to her in September. Sherri thereafter filed a Probate Code section 850 petition, seeking an order invalidating the August 3, 2011 deed and directing Terry to return money allegedly taken from decedent's bank account.

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[1] For the most part, we refer to the parties by their first names, for ease of reference. We mean no disrespect. (*In re Marriage of Balcof* (2006) 141 Cal.App.4th 1509, 1513, fn. 2.)

The court heard testimony from several of decedent's children, the notary, and one of decedent's friends. In its statement of decision, the court observed that Terry had been living with decedent for about five years before her death. It further found: "Terry brought a notary and a deed to this meeting and did not tell [decedent]. She never had the opportunity to discuss a Grant Deed with an attorney or her other children. [¶] [Decedent] knew she was dying. She was so very vulnerable to coercion. The fact that the notary told her it was a Grant Deed really does not overcome the undue influence that was present. [Decedent] knew that she had always wanted her children to share and share alike. When she was presented a document to sign, she signed it without knowing its true impact. Terry had taken advantage of his mother."

In addition, the court found Terry had loaned himself more than $8,000 from decedent's bank account. He did not pay her back even though he had promised to do so, and even though at one point he received a cash settlement from his former employer. In making its findings, the court noted that Terry was not a credible witness.

The court's judgment ordered the cancellation of the deed. It further ordered Terry to return $8,675 to the special administrator. Terry appeals.

II

DISCUSSION

A. Conveyance to Terry:

(1) Introduction—

In her petition, Sherri challenged the validity of the deed on the grounds decedent was incompetent to sign it, and she had always said all of her children would receive equal shares of her estate. Sherri asserted that a confidential relationship existed between Terry and decedent, decedent suffered from poor mental and physical condition at the time she signed the deed, and there was an issue of undue influence.

In her trial brief, Sherri cited Civil Code section 1575, defining undue influence, and *Longmire v. Kruger* (1926) 80 Cal.App. 230, in which the court canceled a deed procured by a grandson who unduly influenced his elderly grandmother. (*Id.* at pp. 232, 236.) Sherri cites those authorities again on appeal. However, Terry does not address them in either his opening brief or his reply brief. Shifting the focus away from legal authorities, Terry simply claims there is overwhelming evidence that decedent was lucid when she executed the deed, and that she wanted the house to be kept in the family for her descendants to visit. He claims that five witnesses provided testimony to show decedent knew what she was doing and the deed carried out her wishes, and that only one witness testified to the contrary. Before we address the evidence, however, we consider the legal framework Terry hopes we overlook.

(2) Undue influence—

Civil Code section 1575 provides: "Undue influence consists: [¶] 1. In the use, by one in whom a confidence is reposed by another, or who holds a real or apparent authority over him, of such confidence or authority for the purpose of obtaining an unfair advantage over him; [¶] 2. In taking an unfair advantage of another's weakness of mind; or, [¶] 3. In taking a grossly oppressive and unfair advantage of another's necessities or distress."

The court in *Longmire v. Kruger*, *supra*, 80 Cal.App. 230, made note of Civil Code section 1575, subdivision (2), and observed that "[t]he question of what constitutes sufficient proof of undue influence depends upon the facts and circumstances of each particular case. [Citations.]" (*Longmire v. Kruger*, *supra*, 80 Cal.App. at p. 239.) The court further stated the general rule that a deed from a parent to a child is presumed to be valid. (*Id.* at p. 237.) It continued: "But where the parent is aged, infirm, or otherwise in a condition of dependency upon the child, who exercises authority over him, a presumption arises which places the burden upon the beneficiary of the gift conveyance, to show the transaction was fair and free from fraud. Equity will scrutinize

such a transaction with great care, and under such circumstances *slight evidence will suffice* upon which to base a finding of undue influence and set aside the deed. [Citations.]" (*Ibid.*, italics added; accord, *Beckmann v. Beckmann* (1959) 174 Cal.App.2d 717, 721.)

The *Longmire* court further stated: "'[I]n a case involving a purported gift *inter vivos*, based upon an alleged consideration of love and affection, where the donee is a [child] having the control and direction of the aged donor, a strong presumption of confidential relations arises, which would place upon the beneficiary in the transaction the burden of showing fairness in dealing, and full understanding on the part of the person parting with the property. [Citation.] In the absence of such showing, the conveyance is presumed to have been obtained by undue influence, and to be void. [Citations.]'" (*Longmire v. Kruger*, *supra*, 80 Cal.App. at p. 238; accord, *Beckmann v. Beckmann*, *supra*,174 Cal.App.2d at p. 721.)

The facts of the case of *Longmire v. Kruger*, *supra*, 80 Cal.App. 230, bear marked similarity to the facts in the case before us. In *Longmire*, the transferor was an elderly woman who was feeble, frequently ill and had a poor memory. She had lived in her own home together with her grandson for many years. Her grandson looked after the household affairs and her personal needs, but lived primarily off her money. She had great confidence in him and authorized him to draw checks on her bank account. (*Id.* at pp. 232-233.)

The grandmother had expressed a desire to leave a one-half interest in her property to her son and one-quarter interests to each of her two grandsons. However, the grandson with whom she lived persuaded her to make a will leaving her property to the three of them in one-third shares. (*Longmire v. Kruger*, *supra*, 80 Cal.App. at pp. 233-234.) Several months later, that grandson arranged for an attorney to prepare a deed by which the grandmother deeded her residence to him. The grandson provided all the requisite information to the attorney, who did not counsel the grandmother on the

transaction. As the court put it, "[t]he old lady had no opportunity for consultation or independent advice." (*Id.* at p. 234.) The attorney asked the grandmother if she wished to deed the property to her grandson and she indicated that she did. He also asked her if she understood that by signing the deed she would be giving the property to her grandson, and she indicated that she did. The grandmother then made her mark upon the deed. (*Id.* at pp. 234-235.)

The trial court nonetheless held that the grandson had unduly influenced his grandmother, who did not execute the deed of her own free will, and it set aside the deed. (*Longmire v. Kruger*, *supra*, 80 Cal.App. at p. 236.) The appellate court held there was ample evidence to support the judgment and affirmed. (*Id.* at p. 242.) Other cases are to similar effect. (See, e.g., *Beckmann v. Beckmann*, *supra*, 174 Cal.App.2d 717; *Sparks v. Sparks* (1950) 101 Cal.App.2d 129.)

It is perhaps telling that Terry does not address *Longmire v. Kruger*, *supra*, 80 Cal.App. 230, or for that matter, any other authority having to do with undue influence. Similar to *Longmire*, Terry resided with decedent, took care of the household and decedent's needs, obtained money from her bank accounts and essentially lived off of her, arranged for the preparation of a deed to himself without discussing it with her first, and obtained the advice of legal counsel for himself but not for her. Furthermore, he presented the deed to decedent when she was dying and asked her to sign it right then and there in the presence of a waiting notary. He did this despite the fact that decedent had previously said she wanted her property divided equally among all of her children.

We agree with the trial court that Terry had subjected decedent to undue influence. Consequently, the deed was properly cancelled.

(3) Substantial evidence—

Terry, however, maintains that there is no substantial evidence to support the court's findings. He contends the weight of the evidence supports his position that decedent wanted him to have the house because she wanted it to stay in the family for her

grandchildren and great-grandchildren to visit, and furthermore, that decedent was lucid when she signed the deed. Although there is evidence to this effect, it does not support a reversal, for reasons we shall discuss.

Terry's sister Cynthia Christie (Cynthia) testified that decedent had said "over and over throughout her life" that she wanted her estate split seven ways, inasmuch as she had seven children. Cynthia said the last time her mother told her that was at the beginning of June. In addition, Cynthia stated that at the hospital on August 3, decedent said she wanted Terry to be "in charge," but did not say she wanted him to have the house. Cynthia interpreted decedent's remarks to mean that she wanted Terry to take care of her medical needs. Cynthia said Terry told decedent that the notary was there "'to take care of [decedent's] wishes and put them on paper.'" According to Cynthia, decedent was shaking, agitated, and in pain, and "was very insistent on trying to read" the document put before her. However, Cynthia did not believe decedent was capable of reading anything at all at that point. She thought Terry was having decedent sign a power of attorney for health care that he had mentioned. She did not find out until much later that he had had decedent sign a deed.

Carolyn Eggleston (Carolyn), another of Terry's sisters, disagreed with the assertion that, at the hospital on August 3, decedent did not say what she wanted. According to Carolyn, decedent said she was making Terry a cotenant because she did not want the house to be sold.

Another sister, Christine Silva (Christine), agreed with Carolyn's version of events. Christine provided a declaration in support of Terry's objections to Sherri's petition to administer the estate. She declared: "The reason [decedent] put [Terry's] name on the house deed is that she knew he would not sell it . . . . [Decedent] wanted to have it remain there for her grandchildren and great-grandchildren to be able to come and gather and be at Grandma's house."

Beverly Brownell (Beverly), a longtime family friend with whom Terry was living at the time of trial, also provided a declaration in support of Terry's objections to Sherri's petition. In her declaration, Beverly used wording identical to that used by Christine, stating: "The reason [decedent] put [Terry's] name on the house deed is that she knew he would not sell it . . . . [Decedent] wanted to have it remain there for her grandchildren and great-grandchildren to be able to come and gather and be at Grandma's house."

Cynthia's testimony alone is sufficient to show that decedent, until shortly prior to her final illness, wanted her property to be divided equally among her seven children. (*Quintanilla v. Dunkelman* (2005) 133 Cal.App.4th 95, 117.) However, there is contrary evidence to the effect that at the time decedent actually signed the deed in the hospital, she wanted Terry to have the house, because she did not want it sold and she believed that if she gave it to him, it would be kept for the benefit of her grandchildren and great-grandchildren.

As the trial court pointed out, however, decedent had not had the opportunity to discuss the matter with legal counsel. Query whether decedent would have made the same decision had she understood either that leaving the property to Terry did not mean it would be kept on hand in perpetuity for the benefit of her grandchildren and great-grandchildren, or that she could have better achieved her objectives through the use of a trust. "One who holds a confidential relationship will be presumed to have taken undue advantage of his trusting friend unless it shall appear that the latter had independent advice and acted not only of his own volition but with full comprehension of the results of his action. [Citation.]" (*Sparks v. Sparks*, *supra*, 101 Cal.App.2d at pp. 135-136.) Here, it is clear that decedent neither had independent legal advice, nor had full comprehension of the legal effect of her action. Consequently, Terry cannot be allowed to retain the benefits of the transaction he arranged. (*Id.* at p. 136.)

Interestingly enough, the notary, Debbie Woodward, testified to the importance of having legal advice. She said that she was both a notary and an escrow officer. She was contacted by a man named Steve, who worked for the real estate company next door to the escrow company. He asked her to prepare a deed for his father-in-law, Terry. The notary said she told him to call her attorney first. She explained that whenever anyone other than a real estate agent or someone buying or selling a house wants a deed, she has them talk to an attorney before she will prepare it. After Terry discussed the matter with the attorney, the attorney called her and told her to prepare the deed, which she did. Despite her own purported policy, however, the notary did not talk to decedent about the deed either before she prepared it or at any time before she met decedent at the hospital. Therefore, the notary counseled only the grantee, not the grantor, to obtain legal advice.

The notary claims that she explained to decedent at her hospital bedside that the document was a deed "and that [it was] going to be both her and her son on the deed, and [decedent] said, 'Yes,' and that's what she wanted." Apparently, the notary thought providing this information herself in front of Terry and the others in the hospital room was an appropriate alternative to receipt of independent legal advice. It wasn't. (*Longmire v. Kruger*, *supra*, 80 Cal.App. at pp. 234-236.)

Not only did decedent have no legal advice, she did not even have any advance opportunity to consider on her own whether a deed would effectuate her desires or to discuss the matter with any other family members. Terry acknowledged that decedent did not know a notary was coming to the hospital and had not consulted with an attorney about a joint tenancy deed. When pressed as to whether he had ever discussed a joint tenancy deed with decedent, Terry evasively responded that he "asked her, 'What do you want me to do about things,' and she said, 'I want you to handle things.'" Similarly, when pressed as to whether decedent had ever asked him to have a deed prepared, Terry replied: "She asked me to take care of things. I told her I would." Finally, when asked

directly if there had "come a point in time when [decedent] said she wanted to put the house in [his] name," Terry replied, "No." Despite this testimony, Terry later on claimed that decedent wanted him to have the house.

In addition, Terry acknowledged that he did not tell his siblings he had had a joint tenancy deed prepared for decedent's signature. However, he did tell them that he had had an advance health care directive prepared.

Terry insists that decedent was lucid when she signed the deed and that she knew what she was doing. He said the notary asked decedent some questions, such as her name and whether she knew who the people in the room were. Christine testified that decedent answered all the questions correctly. Yet Cynthia testified that decedent did not answer all the questions correctly, such as how old she was and where she lived. Cynthia further testified that decedent was confused about what property she even owned. Cynthia said: "[Decedent] at one point thought she had five houses and she thought one of them was in San Francisco, thought one was in Florida. Didn't even know the name Hesperia [where her home was]." Cynthia also said that, on August 1, decedent didn't seem to know who she was, and referred to both Cynthia's daughter and Cynthia's significant other by the wrong names. She further stated: "It just wasn't Mom. She'd look through you." Cynthia also said decedent "wasn't really coherent" in the hospital. "She had talked about her 19 and a half kids that she had. There's seven of us. . . ." Christine, however, disputed this. She said, "I spent a lot of time with her, several all nighters . . . . We had several talks. She was very calm and lucid."

Once again, Cynthia's testimony alone is sufficient to show decedent was confused in her final days at the hospital. (*Quintanilla v. Dunkelman, supra*, 133 Cal.App.4th at p. 117.) However, whether decedent was or was not confused at the moment she signed the deed is not determinative of the question whether the deed should be cancelled. *Longmire v. Kruger*, *supra*, 80 Cal.App. 230 answers that question. Terry has not met his burden to show a lack of undue influence.

B. Loan to Terry:

(1) Documentary evidence—

Terry maintains there is no substantial evidence to show decedent loaned him $8,675 that he was supposed to pay back. He makes this assertion despite the fact that Sherri presented evidence of a series of 28 checks, each one of which was made payable to Terry, was signed by decedent, and bore the notation "Loan." The checks were dated from May 8, 2009 to June 6, 2011, and ranged in amount from $100 to $600. The total amount of the checks was $8,675. Terry says the checks were "the only documentary evidence" in support of the loan characterization, as though 28 checks bearing the notation "Loan" are insufficient evidence to show he was supposed to pay the money back.

(2) Testimony of Terry and Beverly—

Terry testified that he and decedent had an agreement to the effect that he would stay at her house and "take care of things," and she would help him pay his bills, which amounted to about $200 to $300 a month. He said repeatedly that decedent did not expect him to repay her and that she never loaned him money. However, he also provided contradictory testimony.

Terry conceded that the word "Loan" appeared on each of the checks, but he testified that he was the one who wrote the word on each check. Terry further testified that he kept track of the money he got from decedent. He explained: ". . . I don't live off my mother. So my thing with my mom was, . . . 'Mom, help me out and some day when I'm able, I'll make it up to you.'" Similarly, he said, "It's the understanding between my mom and I, 'Mom, I hate getting this money from you. Some day, you know' . . . ." Terry also stated: "It was, like I said, under pride, and . . . it was if I won the lottery or I gained gainful employment again, I would pay my mother back as I had previously one time she helped me." Terry was asked: "[Y]ou testified earlier that you had intended to repay loans made by decedent to you if you won the lottery or something like that; is that

correct?" Terry replied: "Yeah . . . ." He also acknowledged that when he received a $30,000 workers' compensation settlement he did not mention it to decedent.

In addition to his own testimony, Terry cites the declaration of Beverly. Beverly declared that she had been decedent's best friend for nearly 40 years and that decedent had confided in her "on almost everything she did and what her kids did over these many, many years." Beverly declared that when Terry moved in with decedent they had an agreement that decedent would pay his bills in exchange for his paying her bills, doing housework and yard work, cooking, grocery shopping, and taking her places. Beverly said, "[Decedent] had no intention that Terry would have to pay her back."

As the foregoing shows, there is contradictory testimony. On the one hand, Terry said the money was not a loan and he was not expected to pay it back. Beverly, who was not a party to the transaction, also expressed her belief that decedent did not expect Terry to pay the money back. On the other hand, Terry said he kept track of the checks decedent gave him, marked "Loan," because they had an "understanding" that he was going to pay the money back when he had the opportunity to do so, as he had done in the past.

"The trier of fact determines the credibility of witnesses, weighs the evidence, and resolves factual conflicts. We cannot reject the testimony of a witness that the trier of fact chooses to believe unless the testimony is physically impossible or its falsity is apparent without resorting to inferences or deductions. As part of its task, the trier of fact may believe and accept as true only part of a witness's testimony and disregard the rest. On appeal, we must accept that part of the testimony which supports the judgment. [Citation.]" (*In re Daniel G.* (2004) 120 Cal.App.4th 824, 830.) We do so here.

(3) Testimony of Christine—

Terry also cites the testimony of Christine. She opined that the word "Loan" was written on the checks by Terry, not decedent, because she was familiar with

the handwriting of each of them. She also expressed her belief, under cross-examination by Sherri's counsel, that the checks did not represent loans.

Under redirect examination by Sherri's counsel, Christine was asked why she thought the checks did not represent loans. She replied: "That was Terry's way, because I had heard that he was writing those on there at the time, and Mom had told me she had asked him not so . . . . She had asked him not to put that on there." (Error in original.) Sherri's counsel objected on hearsay grounds. Terry's counsel emphasized that the statements were made by decedent, but Sherri's counsel retorted that the checks were written beginning in 2009. The court directed Terry's counsel to limit the questions "as to when those conversations took place." When Christine said she and decedent had discussed the matter a couple of times, with the most recent occasion being sometime in 2011, Sherri's counsel renewed her objection.

The court then asked counsel if he had another foundational question. Counsel replied that a statement to the effect that the checks were not a loan could be construed as a statement against interest, because if the checks were not loans, then she would not be getting the money back. When Sherri's counsel pointed out that decedent was not testifying, the court sustained her objection. Terry's counsel then asked Christine if, sometime after decedent got sick, the two of them had discussed the money Terry received. Christine responded in the negative and Terry's counsel ended his questions.

On appeal, Terry asserts that the court committed prejudicial error in its rulings, because decedent's statements about repayment, as relayed by Christine, constituted declarations against interest and thus were admissible as exceptions to the hearsay rule. He cites Evidence Code section 1230 without analysis. Sherri retorts that Terry's counsel failed to lay an adequate foundation to demonstrate the application of section 1230 and that decedent's alleged statements to Christine may not have been

against decedent's interest, but instead may have been made in order to preserve peace in the family.

We need not give Terry's argument any deeper analysis than he himself did. Assuming for the sake of discussion that the court erred in its ruling, the error was not prejudicial. "We will not reverse a judgment unless 'after an examination of the entire cause, including the evidence,' it appears the error caused a 'miscarriage of justice.' (Cal. Const., art. VI, § 13.) In the case of civil state law error, this standard is met when 'there is a reasonable probability that in the absence of the error, a result more favorable to the appealing party would have been reached.' [Citation.]" (*Elsner v. Uveges* (2004) 34 Cal.4th 915, 939.)

Here, Christine expressed her belief decidedly and repeatedly that the checks did not represent loans. This testimony was not stricken. Although an objection was raised when Christine said decedent had told her she asked Terry not to write the word "Loan" on the check, given the totality of the evidence, it is not reasonably probable that the court would have found the checks were not loans if it had considered that statement. The evidence, even if considered, would not have been determinative. Asking Terry not to write the word "Loan" on the check could have meant, on the one hand, that the checks were not intended to be loans or, on the other hand, simply that it would have made either decedent or Terry uncomfortable to see the word on the check. In any event, considering that the word "Loan" was written on each check, Terry kept a running ledger of the total amount of the checks, he testified that he and decedent had an "understanding" that he would pay her back when he could, and the two of them had made a similar arrangement in the past, it is not reasonably probable that the court would have concluded that the checks were gifts had it considered the alleged statements against interest.

(4) Substantial evidence—

On appeal, Terry, citing *Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, contends "there is no evidence that is reasonable in nature, credible and of solid value that indicates that [he] made a promise to [decedent] to pay back the $8,675 that he had received from her." We disagree, based on the evidence we have just discussed. The checks themselves and Terry's own testimony constituted evidence that is "reasonable in nature, credible, and of solid value" (*id.* at p. 51) to show that the money was a loan, to be kept track of, to be paid back when Terry was in a position to do so, as was the previous course of dealing between the parties.

True, there is contrary evidence as well. Terry himself provided contradictory testimony, as did Christine and Beverly. However, the appellate court is not a second trier of fact and we do not reweigh the evidence. (*In re Marriage of Balcof, supra*, 141 Cal.App.4th at p. 1531.) There is substantial evidence to support the finding that the checks represented loans.

C. Evidence of Child Molestation:

(1) Sherri's trial brief—

Terry challenges the court's failure to strike a portion of Sherri's trial brief wherein she mentioned that Terry was an unemployed registered sex offender. In her trial brief, Sherri described how Terry became dependent upon, and came to have undue influence over, decedent. Sherri said: "[D]ecedent allowed Terry to move in with her during the summer of 2006 after serving time in prison for child molestation. As a result of his conviction, in 2003 Terry lost his job, his teaching credentials and his wife divorced him. Terry began to exert a controlling and dominating influence over decedent and her finances." (Some capitalization omitted.) Sherri further explained how "Terry gained access to decedent's bank accounts and used her monthly income to pay for all of his living expenses including but not limited to cell phone, gym membership, car

insurance, car repairs, car registration, car gas and a storage unit . . . ." (Capitalization omitted.) Sherri also said: "He knew that decedent could die at any time, and if she did, the property would pass intestate to all of decedent's children and he would have to make other living [arrangements]. Given that Terry is unemployed and is a registered sex offender this would be a burden to him." (Some capitalization omitted.)

In his opening brief, Terry argues, without citation to authority, that the court's failure to strike the statements in Sherri's trial brief and to admonish her counsel was grossly prejudicial and improper. However, Terry does not show that he asked for the court to strike any portion of Sherri's trial brief. This being the case, his objection is waived for failure to preserve it in the trial court. (Cf. *Leonardini v. Shell Oil Co.* (1989) 216 Cal.App.3d 547, 584; see also *Heiner v. Kmart Corp.* (2000) 84 Cal.App.4th 335, 346-347.)

(2) Court's remarks—

Terry also complains that the prejudicial statements made in Sherri's trial brief were "followed up on by the Court even after an objection for relevance." At trial, Sherri's counsel asked Terry why he had been terminated from his job, and Terry's counsel objected on the basis of relevance. The court nonetheless permitted the questioning to continue. Terry was asked if he had been convicted of a felony, to which he answered: "Yes, and the charge was dismissed." He explained that the charge was for sexual penetration of a minor, his wife's niece.

Terry complains that the court "wanted the details and then vented because of them," calling him "a convicted child molester." Terry provides an incomplete record reference in support of this statement. It would appear he meant to refer to the portion of the statement of decision wherein the court said: "He had been divorced and terminated from his job for suffering a conviction of sexual molestation of a child. He had no job, no wife and no place to live. His mom took him in."

In his opening brief, Terry cites no legal authority addressing whether the court erred in making either its evidentiary ruling on his relevance objection or its findings in the statement of decision. In his appellant's reply brief, Terry says evidence of his child molestation conviction should have been inadmissible under Evidence Code section 788, subdivision (c).[2] He forgets that he did not make this objection in the trial court. Having failed to do so, it is waived. (*Leonardini v. Shell Oil Co.*, *supra*, 216 Cal.App.3d at p. 584; see also *Heiner v. Kmart Corp.*, *supra*, 84 Cal.App.4th at pp. 346-347.)

III

DISPOSITION

The judgment is affirmed. Respondent shall recover her costs on appeal.

MOORE, J.

WE CONCUR:

O'LEARY, P. J.

BEDSWORTH, J.

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[2] Evidence Code section 788, subdivision (c) provides: "For the purpose of attacking the credibility of a witness, it may be shown by the examination of the witness or by the record of the judgment that he has been convicted of a felony unless: [¶] . . . [¶] (c) The accusatory pleading against the witness has been dismissed under the provisions of Penal Code section 1203.4 . . . ."